Reg. No. KL|TV|12

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1975

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XX] Trivandrum, Friday, 14th November 1975 / 23rd Karthika 1897 [No. 669

NOTIFICATION

No. 1315/GS3/75. *Dated, Trivandrum, 13th November 1975.*

In exercise of the powers conferred by the proviso to sub-section (2) of section 56 of the Cochin University Act, 1971 (30 of 1971), the Chancellor of the University of Cochin is pleased to extend the period of the Senate, the Syndicate and the Academic Council of the said University upto the 15th February, 1976 or till the constitution of the said authorities in accordance with the provisions of the said Act, whichever is earlier.

By order of the Chancellor.

(Sd.)

K. V. VIDYADHARAN,
Secretary to Governor.

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33/4055/MC.

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XX] Trivandrum, Friday, 14th November 1975 / 23rd Karthika 1897 [No. 670

GOVERNMENT OF KERALA

Law (Leg. A) Department

NOTIFICATION

No. 17938-Leg. (A) 2/75/Law. *Dated, Trivandrum, 14th November 1975, 23rd Karthika 1897.*

The following Ordinance promulgated by the Governor on the 13th day of November, 1975, is hereby published for general information.

By order of the Governor,

M. Sekharan,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1975.

33/1057/MC

[illegible]

[illegible]

[illegible]

A

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]

(e) "company" means a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956), and includes a foreign company within the meaning of section 591 of that Act and a co-operative society registered or deemed to be registered under the law relating to co-operative societies for the time being in force, whether its principal place of business is situated in the State or not;

(f) "employment" includes self-employment;

(g) "local authority" means a municipal corporation or a municipal council or a township committee or a panchayat;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "State" means the State of Kerala;

(j) the expression "transacts business" shall be deemed to include the doing of acts of business of whatever nature, whether isolated or not, such as soliciting, obtaining or transmitting orders or buying, making, manufacturing, exporting, importing, removing, transmitting or otherwise dealing with goods;

(k) "year" means the financial year.

3. *Authorities.*—(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be assessing authorities for the purposes of this Ordinance and may assign to them such local limits as the Government may think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Ordinance and may assign to them such local limits as the Government may think fit.

(3) All officers and other persons employed in the execution of this Ordinance shall observe and follow the orders, instructions and directions of the Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

4. *Charge of tax.*—(1) Subject to the other provisions contained in this Ordinance, there shall be charged on every person who exercises a profession, art or calling or transacts business or holds any appointment, public or private, within the State, a half-yearly tax (hereinafter referred to as tax on employment) at the rate specified in the Schedule.

Explanation.—A person shall be deemed to have exercised a profession, art or calling or held an appointment within the State, if that person has an office or place of employment within the State.

(2) A person shall be responsible to the State to contribute to his aggregate income from all the sources specified in sub-section (1) as being liable to the tax on employment.

(3) Where, for the purpose of carrying on business within the State, a person has an office or branch or agent, or firm to represent him, such person shall be deemed to carry on business within the State, whether or not such office, agent or firm has power to make binding contracts on behalf of such person, and the person in charge of such office or the agent or firm, as the case may be, shall be liable to the tax payable by the first mentioned person.

(4) A person otherwise liable to the tax on employment shall not cease to be liable to that tax by reason only of his head office or the place from which his business is controlled being situated outside the State or by reason only of the fact that his transactions are closed outside the State.

Explanation.—For the purposes of this section, the "aggregate income" shall not include overtime wages or local allowances or allowances for house rent, carriage hire or travelling expenses or pension.

5. *Requisition on employers or their representatives to furnish list.*—The assessing authority may by notice require any employer or the head or secretary or manager of any public or private office, banking house or club or a firm or company—

(a) to furnish, within a specified time, a list in writing of the names of all persons employed by such employer or by such office, banking house, club, firm or company as officers, servants, cashiers, agents, suppliers or contractors, with a statement of the salary or income of such employed persons; and

(b) to furnish particulars in respect to any person of whom such employer, or head, secretary or manager, as the case may be, is the agent.

6. *Return.*—(1) If in the opinion of the assessing authority the tax on employment is or will be due for any half-year from any person other than a person in respect of whom the assessing authority obtains to his satisfaction particulars of income under section 5, it shall serve a notice on such person, either in that half-year or in the succeeding half-year requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return showing the income on the basis of which, according to such person, he is liable to be assessed to the tax on employment for that half-year in question.

(2) On receipt of a notice under sub-section (1), the person shall submit a return showing the income derived by him during the half-year for which the tax on employment is claimed or during the previous half-year and may produce any evidence on which such person may rely in support of the return made.

7. *Return after due date and amendment of return.*—If any person has not furnished a return within the time specified in a notice under sub-section (1) of section 6 or having furnished a return under that section discovers any

omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

8. *Assessment.*—(1) If a list with the statement as required by section 5 or a return as required by sub-section (1) of section 6 is furnished and the assessing authority is satisfied that it is correct and complete, it shall levy the tax on employment from the person liable to be assessed on the basis of such statement or return.

Explanation.—If a person produces the notice of demand of income-tax served on him under the Income-tax Act, 1961 (Central Act 43 of 1961), for the year comprising the half-year in question, the assessing authority shall be bound to take one-half of the income mentioned in such notice of demand as the income derived from the sources on which the tax on employment is leviable under this Ordinance, as the income of the said sources for the purpose of levying the tax on employment.

(2) If the assessing authority is not so satisfied, it shall serve a notice on the person concerned, requiring him either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date evidence on which he may rely in support of his return.

(3) The assessing authority, after hearing such evidence as the person may produce and such other evidence as it may require on any specified points, shall, by order in writing, assign to the person the class in the scale appropriate to the half-yearly income of such person as estimated by it.

(4) If any person fails to make a return in response to any notice under sub-section (1) of section 6 or fails to comply with the terms of any notice issued under sub-section (2) of this section, the assessing authority shall, by order in writing, assign to the person concerned the class in the scale appropriate to the half-yearly income of such person as estimated by it.

(5) The assessing authority may, when classifying any person under sub-section (3) or sub-section (4), do so on general considerations with reference to the nature and reputed value of the business transacted, the size and rental of residential and business premises, the quantity and number of articles dealt with, the number of persons employed and the income-tax paid by such persons.

(6) The assessing authority shall not be entitled to call for the accounts of any person.

9. *Power to assess in case of escape from assessment.*—If for any reason any person liable to pay the tax on employment has escaped assessment in any half-year, the assessing authority may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to such tax and demanding payment thereof within thirty days from the date of such service, and the provisions of this Ordinance shall, so far as may be, apply as if the assessment was made in the half-year to which such tax relates.

[illegible]

[illegible]

[illegible]

[illegible] (1) A dealer objecting to the amount of tax [illegible] assessed [illegible] under section [illegible] or [illegible] any order [illegible], may appeal to the appellate authority [illegible] against the assessment or against such order:

Provided that no such appeal shall be entertained unless the tax [illegible] has been paid.

[illegible] The appeal [illegible] shall be in the prescribed form [illegible] verified in the prescribed manner.

(2) The appeal shall be presented within a period of thirty days from the date of service of the notice of demand relating to the assessment or the date of receipt of the order, as the case may be: Provided that the appellate authority may admit an appeal presented after the expiration of the said period, if it is satisfied that the appellant had sufficient cause for not presenting it within the said period:

Provided further that no such appeal shall be admitted after a period of [illegible] months from the date of service of the notice of demand relating to the assessment or the date of receipt of the order as the case may be.

(3) The appellate authority shall fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing and make or cause to be made such further enquiry as it thinks fit.

(4) At the hearing of the appeal, the assessing authority shall also have a right to be heard.

(5) In disposing of an appeal, the appellate authority may,—

(a) in the case of an order of assessment,—

(i) confirm, reduce, enhance or annul the assessment; or

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed;

(b) in the case of any other order, confirm, cancel or vary such order.

(7) The appellate authority shall, on the conclusion of the appeal, communicate the orders passed by it to the appellant and the assessing authority.

(8) The orders passed by the appellate authority shall, subject to the provisions of section 15, be final and shall not be liable to be questioned in a court of law.

14. *Reference to District Court.*—(1) The appellate authority may, if it is satisfied either *suo motu* or on application by any party to an appeal under section 13 that the decision on the appeal involves a question of law, draw up a statement of the case and refer it to the District Court.

(2) If the District Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the question raised thereby, the court may refer the case back to the appellate authority to make such additions thereto or alterations therein as the court may direct in that behalf.

(3) The District Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the court to the appellate authority which shall pass orders on the appeal in conformity with such judgment.

(4) For the purposes of this section, "District Court" means the District Court having jurisdiction over the area in which the assessee exercises his profession, art or calling or transacts business or holds appointment.

15. *Powers of revision of the District Collector.*—The District Collector may at any time call for and examine the record of any proceeding pending before or disposed of by the appellate authority or the assessing authority and may pass such order in reference thereto as he thinks fit:

Provided that no such order shall be passed under this section without notice to the party who may be affected by the order:

Provided further that no order passed on the basis of a reference under section 14 to the extent covered by the answer to such reference shall be subject to revision by the District Collector.

16. *Rectification of mistakes.*—(1) The appellate authority or the revisional authority may at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may at any time within three years from the date of any assessment or order passed by it, of its own motion, rectify any mistake apparent from the record of the

[illegible]

[illegible]

(2) [illegible]

(3) [illegible]

[illegible]

(a) [illegible]

(b) [illegible] production of documents;

(c) [illegible] evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

18. *Refunds.*—(1) [illegible] the amount [illegible]

(2) [illegible] in appeal [illegible] amount [illegible]

19. *Limitation of claims for refunds.*—No claim to any refund of [illegible] within three [illegible] or, where an appeal has been [illegible] within three years from the date [illegible] in appeal or revision, as the case may be.

20. *Penalties.*—(1) If any person fails without reasonable cause—

(a) to furnish within the specified time [illegible] which he [illegible] to furnish to the assessing authority under section 5; or

(b) to furnish a return on or before the date specified in any notice under sub section (1) of section 6,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) A person shall not be proceeded against for an offence under this section except at the instance of the assessing authority.

(3) The District Collector may, either before or after the institution of proceedings, compound any such offence.

Explanation.—For the purposes of this section, "Magistrate" means a Judicial Magistrate of the First Class or a Judicial Magistrate of the Second Class specially empowered by the Government to try offences under this Ordinance.

21. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

22. *Manner of service of notice.*—(1) A notice or requisition under this Ordinance may be served on the person therein named either by post or as if it were a summons issued by a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) Any such notice or requisition may be addressed,—

(a) in the case of a firm or a Hindu undivided family or an Aliyasanthana family or branch or a Marumakkathayam tarwad or

tavazhi or a family to which the provisions of the Kerala Namboodiri Act, 1958, apply, to any member of the firm or to the Manager, Yajaman or Karanavan, as the case may be, or any adult member of the family, branch, tarwad or tavazhi;

(b) in the case of a local authority or company, to the principal officer thereof;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

23. *Liability of agents of companies, firms, associations, etc., to tax on employment.*—The tax on employment leviable from a company, firm, association, Hindu undivided family, Aliyasanthana family or branch, Marumakkathayam tarwad or tavazhi or a family to which the provisions of the Kerala Namboodiri Act, 1958, apply, may be levied from the agent of the company, firm or association or the Manager, Yajaman or Karanavan of the family, branch, tarwad or tavazhi, as the case may be.

24. *Statements, returns, etc., to be confidential.*—All statements made, returns furnished or accounts or documents produced in connection with the assessment of the tax on employment under this Ordinance shall be treated as confidential and shall not be granted to the public.

25. *Computation of periods of limitation.*—In computing the period of limitation prescribed for an appeal under this Ordinance, the time required for obtaining a copy of such order shall be excluded.

26. *Bar of jurisdiction.*—No suit shall lie in any civil court to set aside or modify any assessment made under this Ordinance and no prosecution, suit or other legal proceeding shall lie against the Government or any authority or officer for anything in good faith done or intended to be done under this Ordinance.

27. *Power of assessing authority, etc., to call for information from local authorities.*—The assessing authority or the appellate authority or the District Court or the revising authority may, for the purposes of this Ordinance, call for any information regarding an assessee from the local authority to which that assessee is liable to pay the profession tax payable under the law governing that local authority and such local authority shall be bound to furnish the information.

28. *Removal of difficulties.*—If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appear to them to be necessary or expedient or the purpose of removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Ordinance.

29. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Ordinance.

(2). In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the procedure for the assessment, levy and collection of the tax on employment;

(b) the form of the notice of demand mentioned in section 10;

(c) the mode and manner of payment of the tax on employment;

(d) the powers and duties of authorities and officers under this Ordinance;

(e) the conditions of service of the assessing authorities and appellate authorities;

(f) the form in which appeals under this Ordinance shall be presented and the manner in which they shall be verified;

(g) the manner in which and the authority to which applications for refund shall be made and the procedure to be followed in respect of such applications; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. *Establishment of Housing Fund and its utilisation.*—(1) On the commencement of this Ordinance, there shall be established a Fund to be called the Kerala State Poor Housing Fund (hereinafter in this section referred to as 'the Housing Fund').

(2) The proceeds of the tax on employment levied and collected under this Ordinance, together with the fines, interest and fees recovered thereunder, shall first be credited to the Consolidated Fund of the State, and, after deducting the expenses of collection and recovery as determined by the Government, the remaining amount shall, under appropriation duly made by law in this behalf, entered into, and transferred to, the Housing Fund.

(3) Any amount transferred to the Housing Fund shall be charged on the Consolidated Fund of the State.

(4) No sum shall be paid or applied from and out of the Housing Fund except in the manner and for the purpose provided in sub-sections (5) and (6).

(5) The amount standing to the credit of the Housing Fund shall be expended in such manner and subject to such conditions as may be prescribed for the purpose of providing house sites for landless poor persons.

Explanation.—For the purposes of this sub-section, "landless poor person" means a person who does not hold any land which is fit for construction of a dwelling house, either as owner or as tenant having fixity of tenure, and whose annual income is not more than five hundred rupees.

(6) The Housing Fund shall be held and administered on behalf of the Government by an officer not below the rank of Secretary to the Government, subject to such general or special directions as may be given by the Government from time to time.

THE SCHEDULE

(*See* section 4)

Rate of Tax on employment

Class	*Half-yearly income*	*Rs.*
I	Not more than Rs. 1,200	Nil.
II	More than Rs. 1,200 but not more than Rs. 1,800	3.00
III	More than Rs. 1,800 but not more than Rs. 3,000	6.00
IV	More than Rs. 3,000 but not more than Rs. 4,800	18.00
V	More than Rs. 4,800 but not more than Rs. 6,000	37.50
VI	More than Rs. 6,000 but not more than Rs. 9,000	50.00
VII	More than Rs. 9,000 but not more than Rs. 12,000	75.00
VIII	More than Rs. 12,000 but not more than Rs. 15,000	100.00
IX	More than Rs. 15,000	125.00

N. N. WANCHOO,
GOVERNOR.

Reg. No. KL/TV/12

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1975

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XX] Trivandrum, Friday, 14th November 1975 / 23rd Karthika 1897 [No. 671

GOVERNMENT OF KERALA

Public Works (Transport C) Department

NOTIFICATION

No. G. O. Rt. 1570/75/PW. *Dated, Trivandrum, 14th November 1975.*

S. R. O. No. 1084/75.—WHEREAS representations have been received by Government from the stage carriages and public carrier goods vehicles operators that the vehicle tax in respect of stage carriages and public carrier goods vehicles for the quarter ending 31-12-1975 could not be remitted in time and requested for extension of time for payment of Motor Vehicles Tax in respect of stage carriages and public carrier goods vehicles;

WHEREAS Government are convinced that circumstances exist that the stage carriages and public carrier goods vehicles operators could not remit the vehicle tax in respect of stage carriages and public carrier goods vehicles ordinarily kept in the State for the quarter ending 31-12-1975 due to financial strain;

WHEREAS Government are convinced that non-operation of the vehicles due to non-payment of tax would cause great inconvenience to the students and travelling public;

AND WHEREAS Government consider it necessary to extend in public interest the time for payment of vehicle tax in respect of stage carriages and public carrier goods vehicles;

AND NOW THEREFORE in exercise of powers conferred by Section 22 of Kerala Motor Vehicles Taxation Ordinance, 1975 (7 of 1975), published in a Gazette Extraordinary No. 521 dated the 6th September, 1975 read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975 published in a Gazette Extraordinary No. 572 dated the 29th September, 1975, and in partial modification of Notification No. G. O. Rt. 1485/75/PW. dated 30th October, 1975, published as S. R. O. No. 1024/75 in Gazette Extraordinary No. 639 dated 30th October 1975, the Government of Kerala hereby order in public interest that the vehicle tax for the quarter ending 31-12-1975 in respect of stage carriages and public carrier goods vehicles ordinarily kept in the State shall be paid on or before 30th day of November 1975.

By order of the Governor,

T. S. RAMAKRISHNAN,

Joint Secretary to Government.

Explanatory Note

(This is not part of the notification but is intended to explain the reason for the issue of notification).

Government have received many petitions from Stage Carriages and public carrier goods vehicles operators requesting for extension of time for remittance of vehicle tax for the quarter ending 31-12-1975 due to financial strain.

Government are convinced of the position and in public interest grant extension of time for payment of tax as notified as otherwise those vehicles might be put out of operation for non-payment of tax, causing great inconvenience to travelling public and consignors of goods.

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Government of Kerala
1975

KERALA GAZETTE

EXTRAORDINARY

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Vol. XX] Trivandrum, Friday, 14th November 1975 / 23rd Karthika 1897 [No. 672

GOVERNMENT OF KERALA

Health (G) Department

NOTIFICATION

No. 61962/G3/75/HD. *Dated, Trivandrum, 14th November 1975.*

S.R.O. No. 1085/75.—In exercise of the powers conferred under Sub-section (1) of Section 122 of the Travancore Cochin Public Health Act, 1955 (Act 16 of 1955) Government of Kerala hereby declare that Vaikom Temple and surrounding area within 3 Kilometres radius of the Vaikom Temple shall for the purpose of the Chapter XIII of the said Act, be a festival area for 13 days from 15-11-1975 to 27-11-1975 in connection with the Ashtami Festival at Vaikom Temple in Kottayam District.

By order of the Governor,
C. P. RAMAKRISHNA PILLAI,
Secretary.

Explanatory Note

The Ashtami Festival in the Vaikom temple is to be Celebrated from 15-11-1975 to 27-11-1975. It is therefore necessary to declare the area surrounding Vaikom temple as a festival area for Public Health purposes. The notification is for the above purpose.

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Government of Kerala
1975

KERALA GAZETTE

EXTRAORDINARY

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Vol. XX] **Trivandrum, Friday,** **14th November 1975 / 23rd Karthika 1897** [No. 673

GOVERNMENT OF KERALA

Law (Leg. Tbl.) Department

NOTIFICATION

No. 3612/Leg. Tbl./75/Law.

Dated, Trivandrum, 14th November 1975/
Karthika 23, 1897.

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 11th day of November, 1975.

By order of the Governor,

V. NARAYANAN TAMPI,
Additional Law Secretary.

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TRIVANDRUM, 1975

33/4074/MC

ACT 31 OF 1975

THE KERALA SCHEDULED TRIBES (RESTRICTION ON TRANSFER OF LANDS AND RESTORATION OF ALIENATED LANDS) ACT, 1975

An Act to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith.

Preamble.—WHEREAS it is expedient to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "competent authority", with reference to any land, means the District Collector of the district in which the land is situate or any other officer appointed by the Government to be the competent authority for the purposes of this Act for the area in which that land is situate;

(b) "immovable property" includes standing crops and trees but does not include growing grass;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Revenue Divisional Officer", with reference to any land, means the Revenue Divisional Officer having jurisdiction over the area in which that land is situate or any other officer appointed

by the Government to perform the functions of the Revenue Divisional Officer under this Act, in the area in which that land is situate;

(e) "Scheduled Tribe" means any of the Scheduled Tribes in relation to the State as specified in the Constitution (Scheduled Tribes) Order, 1950;

(f) "State" means the State of Kerala;

(g) "transfer", in relation to immovable property, means an act by which immovable property is conveyed by any documentary or oral transaction, whether by way of mortgage with or without possession, lease, sale, gift or exchange, or in any other manner, not being a testamentary disposition; and includes a charge, 'vilapanayam', 'unduruthi', contract relating to immovable property, mortgage, pledge or hypothecation of crops or standing trees on payment of consideration or otherwise, voluntary surrender and abandonment.

Explanation.—For the purposes of this clause,—

(i) "vilapanayam" means hypothecation of crops on payment of consideration or otherwise;

(ii) "unduruthi" means an assignment of the right to collect the usufructs available or anticipated to be available on any land during a specified term for a specified price.

3. *Exemptions.*—Nothing contained in this Act shall apply to—

(a) the lease of any land or building or both granted by the Administrator General, Official Trustee or Official Receiver; or

(b) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of the Government as security for the purpose of obtaining any loan or other assistance from the Government; or

(c) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), or a corporation or a nationalised bank or any other financing agency, not being a private agency or a money-lender, as security for any loan advanced by such society, corporation, bank or other agency.

4. *Restriction on transfer.*—Notwithstanding anything to the contrary contained in any other law, or in any contract, custom or usage, or in any judgment, decree or order of any court, any

transfer effected by a member of a Scheduled Tribe, of immovable property possessed, enjoyed or owned by him, on or after the commencement of this Act to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid.

5. *Certain transfers to be invalid.*—Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any court, any transfer of immovable property possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January, 1960, and before the commencement of this Act shall be deemed to be invalid.

6. *Reconveyance of property.*—(1) Where by reason of a transfer of immovable property which is invalid under section 4 or section 5, a member of a Scheduled Tribe has ceased or ceases to be in possession or enjoyment thereof, he shall be entitled to the restoration of possession or enjoyment, as the case may be, of such property.

(2) Any person entitled to be restored to the possession or enjoyment of any immovable property under sub-section (1) or any other person on his behalf may make an application, either orally or in writing, to the Revenue Divisional Officer within a period of one year from the date of commencement of this Act or such further period as may be specified by Government by notification in the Gazette,—

(a) for restoration of possession or enjoyment, as the case may be, of such property, if such transfer had been made before the date of commencement of this Act; or

(b) for restoration of possession or enjoyment, as the case may be, of such property and for the prosecution of the person who has procured such transfer, if such transfer was made on or after the date of commencement of this Act.

(3) On receipt of an application under sub-section (2), the Revenue Divisional Officer shall make or cause to be made necessary inquiries in respect of such application and, if he is satisfied that the applicant or the person on whose behalf the application has been made is entitled to restoration of possession or enjoyment, as the case may be, of the immovable property mentioned in the application, he shall, by order, direct the person in possession or enjoyment of such property to deliver possession thereof to the applicant or to the person on whose behalf the application has

been made, or, as the case may be, to allow him to enjoy such property, within a period of thirty days from the date of service of the order and also specify the amount payable under section **11**:

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the property has been given a reasonable opportunity of being heard in the matter.

(4) Every order made under sub-section (3) shall be served on the person for whom it is intended,—

(a) by delivering or tendering it to that person; or

(b) if it cannot be delivered or tendered to that person, by delivering or tendering it to any officer of such person or any adult member of the family of such person or by affixing a copy thereof on the outer-door or some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or

(c) failing service by any of these means, by registered post.

(5) Any person aggrieved by an order of the Revenue Divisional Officer under sub-section (3) may, within a period of thirty days from the date of service of the order, prefer an appeal to the competent authority, and the decision of the competent authority on such appeal shall be final and shall not be called in question in any court of law.

(6) Where an order under sub-section (3) has not been complied witb, and

(a) an appeal has not been preferred within the time allowed for such appeal; or

(b) an appeal having been preferred has been dismissed, the Revenue Divisional Officer shall cause the immovable property to which the order relates to be delivered to the transferor by putting him in possession or enjoyment of that property, if need be, by removing any person who refuses to vacate the same..

7. *Suo motu action by Government.*—(1) Notwithstanding anything contained in section 6, the Government may, of their own motion, by order, direct the person in possession or enjoyment of any immovable property to deliver possession thereof to a member of a Scheduled Tribe or allow such a member to enjoy such property, if they are satisfied after necessary inquiries that such member was deprived of the possession or enjoyment, as the case may be, of that immovable property by reason of a transfer which is invalid under section 4 or section 5:

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the property has been given a reasonable opportunity of being heard in the matter.

(2) Every order under sub-section (1) shall be served on the person for whom it is intended in the manner specified in sub-section (4) of section 6.

(3) An order under sub-section (1) shall be final and shall not be questioned in any court.

8. *Burden of proof.*—Where, in any proceedings under this Act, or in the trial of an offence punishable under section 13, the validity of any transfer of immovable property is called in question, the burden of proof of the validity shall, notwithstanding anything contained in any other law for the time being in force, lie on the person who claims such transfer to be valid.

9. *Inadmissibility of deeds for purposes of registration.*—Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908), no deed of transfer of any immovable property executed in contravention of or contrary to the provisions of this Act shall be accepted in registration.

10. *Prohibition to attachment of immovable properties.*—For the execution of a money decree against a member of a Scheduled Tribe, no right or interest held by him in any immovable property, shall be liable to be attached or sold except to the extent and in the manner prescribed.

11. *Liability to pay amount.*—(1) Notwithstanding anything contained in any other law for the time being in force, where the possession or enjoyment of any immovable property is restored to a member of a Scheduled Tribe under this Act, an amount equal to the aggregate of the actual amount of consideration received by such member at the time of the transfer and an amount determined by the competent authority for improvements, if any, made after the transfer and before such restoration shall be paid by him to the person from whom possession or enjoyment, as the case may be, was restored, in accordance with the rules made under this Act:

Provided that no amount shall be payable if the transfer was effected on or after the commencement of this Act.

(2) The amount determined by the competent authority under sub-section (1) shall be final and shall not be called in question in any court.

(3) The amount payable under sub-section (1) shall be recoverable in such manner as may be prescribed.

12. *Government to advance loan for payment of amount.*—(1) The Government may, subject to such rules as may be made in this behalf, advance loans to the members of Scheduled Tribes who are liable to pay amounts under section 11.

(2) Loans advanced under sub-section (1) shall be repaid in twenty equal annual instalments in accordance with such rules as may be made in this behalf.

(3) If any default is made in the repayment of a loan advanced under sub-section (2), the amount in default shall be recoverable under the Kerala Revenue Recovery Act as if it were arrear of public revenue due on land.

13. *Offences and penalties.*—Any person who on or after the commencement of this Act procures transfer of any immovable property in contravention of the provisions of section 4, shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

14. *Cognizance of offences.*—(1) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act:

Provided that the Government may constitute one or more than one special court exclusively for the trial of the offences under this Act.

(2) In a case where transfer of immovable property in contravention of section 4 has been made on or after the commencement of this Act, the Revenue Divisional Officer shall file a complaint to the Magistrate having jurisdiction or to the special court, as the case may be, for the trial of the offences under this Act.

(3) Any person aggrieved by a transfer in contravention of section 4 or any other person on his behalf shall also be entitled to file a complaint before a Magistrate having jurisdiction or to the special court as the case may be, for the trial of the offence under this Act.

15. *Bar on proceedings against Scheduled Tribes under Chapter X of the Code of Criminal Procedure.*—Where a person claiming to be a member of a Scheduled Tribe or any other person on his behalf applies to the Revenue Divisional Officer for the restoration of possession or enjoyment of any land under the provisions

of this Act, or where the Government take suo motu action under section 7 for the restoration of the possession or enjoyment of any immovable property to any person, then, notwithstanding anything contained in any other law for the time being in force, no Magistrate shall have jurisdiction under Chapter X of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in respect of any dispute between that person and any other person claiming to be in possession or enjoyment of the said land.

16. *Legal practitioner not to appear in proceedings under the Act.*—No legal practitioner shall appear, plead or act on behalf of any party in any proceedings before the Revenue Divisional Officer or the competent authority or the Government, except with the written permission of such officer or authorily or the Government, as the case may be.

17. *Powers of competent authority and Revenue Divisional Officer.*—(1) The competent authority and the Revenue Divisional Officer while making inquiries under this Act shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) any other matter which may be prescribed.

(2) The decisions of the competent authority and the Revenue Divisional Officer under this Act shall have the force of a deerce of a civil court.

18. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion requires, by order, do anything not inconsistent with the provisions of this Act which appears to them necessary for the purpose of removing the difficulty.

19. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any person for anything done or purporting to be done in good faith under this Act or the rules made thereunder.

20. *Saving of other laws.*—The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act, except to the extent provided in this Act.

21. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is, by or under this Act, required to be settled, decided or dealt with or to be determined by the competent authority or the Revenue Divisional Officer.

22. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.